

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SOUND AROUND, INC.,

Plaintiff,

v.

GLOBAL-PROTON LLC, STEVEN JOHNSON,
HEATWAVE, LLC, AMAZON.COM, INC.
JOHN DOE 1 and JOHN DOE 2.

Defendants.

**DECLARATION OF
JERRY BRACH IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION
AND TEMPORARY
RESTRAINING ORDER**

JERRY BRACH declares as follows:

1. I am president of Plaintiff, Sound Around, Inc. (“Sound Around”). I make this declaration in support of Sound Around’s motion for a preliminary injunction and application for a temporary restraining order.

2. Sound Around is a New York corporation with an address at 1600 63rd Street, Brooklyn, New York 11204.

3. Founded over 40 years ago, Sound Around has been and is a leading importer and seller of high-quality electronics products, including, audio and video products, DJ equipment and musical instruments, as well as houseware products, kitchen appliances, fitness equipment, toys, scooters, among others. Sound Around currently carries many different products.

4. Sound Around does not itself manufacture products. Instead, it purchases them and arranges for one of its brand names to be placed thereon. Sound Around’s

brand names include the following: PYRAMID, PYLE, LANZAR, SERENELIFE, NUTRICHE, and more than twenty (20) other famous brand names.

5. Sound Around markets and sells its products directly and through different online selling portals, for example through its own portal www.pyleusa.com and also through third party ecommerce portals such as Amazon, Walmart and eBay. At Amazon, Sound Around operates several “Amazon Stores” including the SereneLife store and NutriChef store.

6. One product that Sound Around has been selling at its Amazon, “SereneLife” store is a towel warmer called “The SA Towel Warmer,” which is sold in several styles under different Amazon, so-called, ASIN numbers. The towel warmer product is intended to warm a towel while one is bathing or showering, and then allows the bather to dry herself with a luxuriously heated towel. This product is depicted in **Exhibit A** hereto.

7. In 2022, a China based entity named Keenray Innovations Limited (hereinafter, “Keenray”) contacted Amazon and demanded that Amazon delist, i.e., cease offering, the SA Towel Warmer, listed under Amazon’s ASIN number, B0961BDJPX.

8. Keenray alleged to Amazon that it owns U.S. Design Patent, D952,810 S (the ‘810 Patent) entitled a “Blanket Towel Warmer”, and that the SA Towel Warmer infringes on its ‘810 Patent. In response, Amazon shut down sales of the SA Towel Warmer, without prior warning to Sound Around, warning Sound Around that Amazon “...takes intellectual property infringement seriously, and “If we receive more complaints about your listings, we may take further action **up to and including not allowing you to sell to Amazon.**” (Emphasis supplied).

9. Sound Around responded by filing an action in this district against Keenray and others, under case no. *Sound Around Inc. v. Shenzhen Keenray Innovations Limited et al* Civil Action No.: 1:22-cv-06943(HG) (“the Pending Action”), asserting that the ‘810 patent has been fraudulent procured and is invalid and unenforceable. In addition, Keenray’s actions have egregiously and irreparably damaged the good will that Sound Around has worked hard and has achieved in relation to the mention product represented by the Amazon B0961BDJPX ASIN number.

10. Responsive to the filing of the Pending Action and other information provided by Sound Around, Amazon retracted the delisting of the SA Towel Warmer and restored it to the Amazon selling portal, where it has been enjoying brisk sales since being restored to the Amazon selling portal.

11. Ostensibly, there are other China-based entities and individuals that are obsessed with trying to delist the SA Towel Warmers from the Amazon selling portal, including at least the Defendants Global-Proton LLC “Global” and Steven Johnson (“Mr. Johnson”), as more specifically explained below.

12. In July 2023, Amazon notified Sound Around as follows:

Hello,

We received a report from a rights owner that claims the items at the end of this email infringe their utility patent rights. We consider allegations of intellectual property infringement a serious matter. We have provided the rights owner’s contact information below:

-- Steven
-- steven@global-proton.com
-- Patent number: 8481895

Please work directly with the rights owner to resolve this dispute. We encourage you to resolve this dispute promptly. Failure to do so may result in removal of your offers or your Amazon.com selling privileges.

ASIN: B09Y299Q8Q

Title: SereneLife Bucket Towel Warmers, with Customized Fragrance for Spa and Bathroom, Luxury Towel Heater Gifts for Him & Her, Auto Shut off, Fits 2 large Towels, Blankets, Bathrobes, PJ's (Black)

Complaint ID: 13239575821

Sincerely,
Seller Performance Team
Amazon.com
<http://www.amazon.com>

13. Sound Around determined that an alleged “rights holder” contends to Amazon that Sound Around’s SA Towel Warmers infringe upon U.S. utility patent No. 8,481,895 (“the ‘895 patent”). A true and correct copy of the ‘895 patent is attached hereto as Exhibit B.

14. The records of the U.S. Patent and Trademark Office (“PTO”) indicate that the ownership of the ‘895 patent was transferred, on June 23, 2023, from the prior registered owner, Heatwave, LLC (“Heatwave”), to an entity called Global-Proton, LLC, which is the defendant Global in this action.

15. From email communications with the “Steven” identified by Amazon, Sound Around learned that Steven is allegedly an individual name Steven Johnson, who wrote to Sound Around’s IP counsel Max Moskowitz, as follows:

From: Steven Jonson [<mailto:steven@global-proton.com>]
Sent: Tuesday, July 11, 2023 4:24 PM
To: Max Moskowitz <mmoskowitz@ostrolenk.com>
Subject: Re: 2853-1 Re: US patent no. 8481895

Hi Max Moskowitz,

I'm Steven Johnson and I'm the manager of Global Proton. I am not Michael Brandt. He is our patent attorney.

We are not patent trolls, our designers are designing patent products.

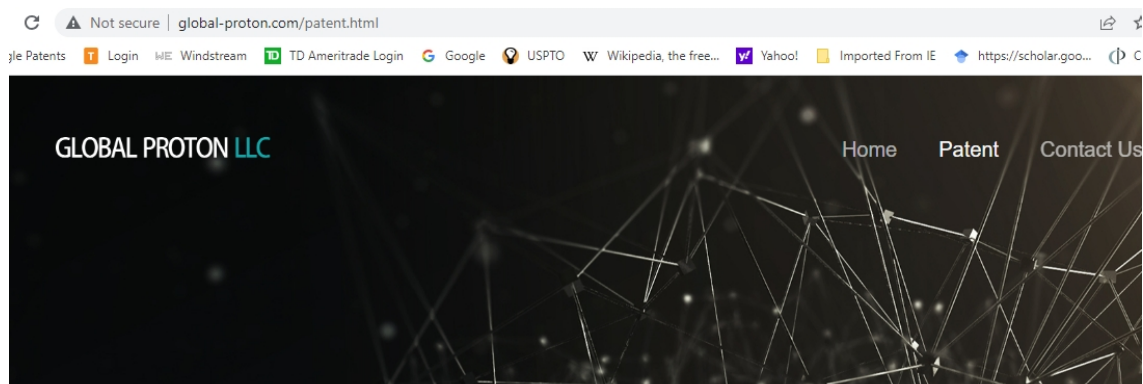
May I ask which company you represent? I have spoken to my lawyer about this. After he understands the situation, he will contact you.

Steven

16. I am informed that the records of the PTO reveal a trademark filing in June 2023 that discloses that the Defendant Global is Chinese LLC located at 100N Ashley Dr Suite 600 Tampa FLORIDA 33602, as indicated below:

Word Mark	GLOBAL PROTON
Goods and Services	IC 011. US 013 021 023 024 031 034. G & S: LED flashlights; Electric towel warmers
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	98043419
Filing Date	June 15, 2023
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Global Proton LIMITED LIABILITY COMPANY CHINA 100N Ashley Dr Suite 600 Tampa FLORIDA 33602
Attorney of Record	Michael Brandt
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

17. Global has a web page viewable at www.global-proton.com and is advertising, inter alia, the '895 patent as shown below:



Patent: US 8,481,895

Patent US 8,481,895 is about the towel warmer. This patent was invented by Curtis Taylor, Douglas E. Whitner, Marc Louis Vitantonio, and It has been transferred to Global Proton in 2023. Global Proton will be committed to the development of towel warmers. Please do not infringe this patent from other manufacturers.

18. From the website of Global, it appears that the only business of Global is to enforce the ‘895 patent. Otherwise, Global has thus far no products and no services from which it derives any revenue whatsoever.

19. The Patent Laws impose on patent applicants and upon their attorneys and representatives a “duty of candor and good faith”. See 37 C.F.R. 1.56.

20. Making false and material statements to the PTO amounts to “inequitable conduct,” which includes: “affirmative misrepresentations of a material fact, failure to disclose material information, or submission of false material information, coupled with an intent to deceive.” (As set forth in Purdue Pharma L.P. v. Boehringer Ingelheim GMBH, 237 F.3d 1359, 1366, 57 USPQ2d 1647, 1652 (Fed.Cir.2001)).

21. In fact, the ‘895 patent expired on July 10, 2021 owing to its then owner’s, Heatwave’s, failure to pay the required maintenance fee, which was due not later than July 9, 2021.

22. On information and belief, Heatwave knew that the maintenance fee on the ‘895 patent was due as set forth above, and consciously and deliberately opted not to pay it, knowing and understanding that the failure to pay the required fee will cause the ‘895 to lapse.

23. On information and belief, long prior to 2021 and as early as 2018, Heatwave lost interest in the product described in the ‘895 patent, as reflected in the records of U.S. trademark registration no. 3,428,792, which Heatwave proactively chose to abandon and to become CANCELLED, as per the details that are shown below:

Word Mark TOWELSPA TOWEL WARMER

Goods and Services (CANCELLED) IC 011. US 013 021 023 031 034. G & S: **Electric devices for warming various articles in the nature of electric towel warmers, electric clothing warmers, electric sheet warmers, electric blanket warmers, and electric shoe warmers.** FIRST USE: 20071201. FIRST USE IN COMMERCE: 20071201

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 01.15.05 - Smoke ; Steam ; Vapor

Search Code 26.17.02 - Bands, wavy ; Bars, wavy ; Lines, wavy ; Wavy line(s), band(s) or bar(s)

Trademark Search Facility INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames

Classification Code SHAPES-BAR-BANDS Designs with bar, bands or lines

Serial Number 78966879

Filing Date September 5, 2006

Current Basis 1A

Original Filing Basis 1B

Published for Opposition September 25, 2007

Registration Number 3428792

Registration Date May 13, 2008

Owner (REGISTRANT) **HEATWAVE, LLC LIMITED LIABILITY CORPORATION OHIO 812 HURON ROAD SUITE 240 CLEVELAND OHIO 44115**

Attorney of Record Brian E. Turung

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TOWEL WARMER" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator DEAD

Cancellation Date December 14, 2018

24. On information and belief, the Defendants Global and Mr. Johnson, and the entities/individuals John Doe 1 and John Doe 2, in active concert and participation, conspired to revive the abandoned and EXPIRED ‘895 patent, including by contacting Heatwave and/or others connected with Heatwave, and persuading them to file a petition at the PTO to re-instate the ‘895 patent, by falsely representing to the PTO that the abandonment and expiration of the ‘895 patent was “UNINTENTIONAL” (knowing the same to be brazenly false and incorrect).

25. Thereby, blinded by the monies and/or other monetary promises, Heatwave falsely revived the ‘895 patent based on a petition to the PTO to revive the patent that Heatwave filed in June of 2023. This petition is of a type that the PTO accepts automatically without any proof of the veracity of the truth of the statements therein, accepting that the abandonment was “unintentional,” and leaving it the Judicial branch of the U.S. Government to resolve the veracity and/or appropriateness of the Petition allegations.

26. Regardless, the conspiratorial actions of Global, Mr. Johnson and/or others that restored the ‘895 patent were done with a specific aim of being able to lodge a complaint at Amazon against no one other than Sound Around.

27. On information and belief, Global’s infringement complaints to Amazon have been aimed and targeted mainly Sound Around towel warmers and also warmers being sold by Sound Around’s vendor for these products, namely a Chinese company called Goldenhot that is identified and is a party in the Pending Action.

28. Notably, and upon information and belief, while warmers identical to ones sold by Sound Around are also sold on Amazon by the Defendant Keenray (identified in

the Pending Action), none of the IDENTICAL Keenray towel warmers have been targeted by Global, evidencing that the John Does referenced in this action are affiliated with Keenray (the Chinese entity that has been actively trying to delist the Sound Around towel warmers).

29. The Defendant's, Amazon's, warning to Sound Around, including that it might delist the accused SA Towel Warmers are misguided and grossly unfair and driven by Amazon having been misled and deceived that the '895 is a valid and enforceable patent, when, in fact, that patent has self EXPIRED on July 10, 2021 and then been fraudulently reinstated by Heatwave in active concert and participation of Global the John Doe Defendants.

30. I am informed through my China based vendor Goldenhot that there is no record in China of the entity Global Proton LLC having been formed.

31. I am also informed that the defendant Steven Johnson (who other records indicate the name Steven Jonson) may not actually identify an individual by that legal name in the U.S. or in China.

32. To date, Global has not withdrawn its complaint to Amazon about the alleged infringement of the '895 patent, despite its constructive knowledge that the '895 patent is invalid and unenforceable.

33. Therefore, the overall effect of Global's and Mr. Johnson's fraudulent actions have put Sound Around's entire relationship with Amazon at grave risk, and threatens irreparable damage to Sound Around's ability to offer and sell HUNDREDS of Sound Around's products to consumers who shop on Amazon.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 18th day of July, 2023.

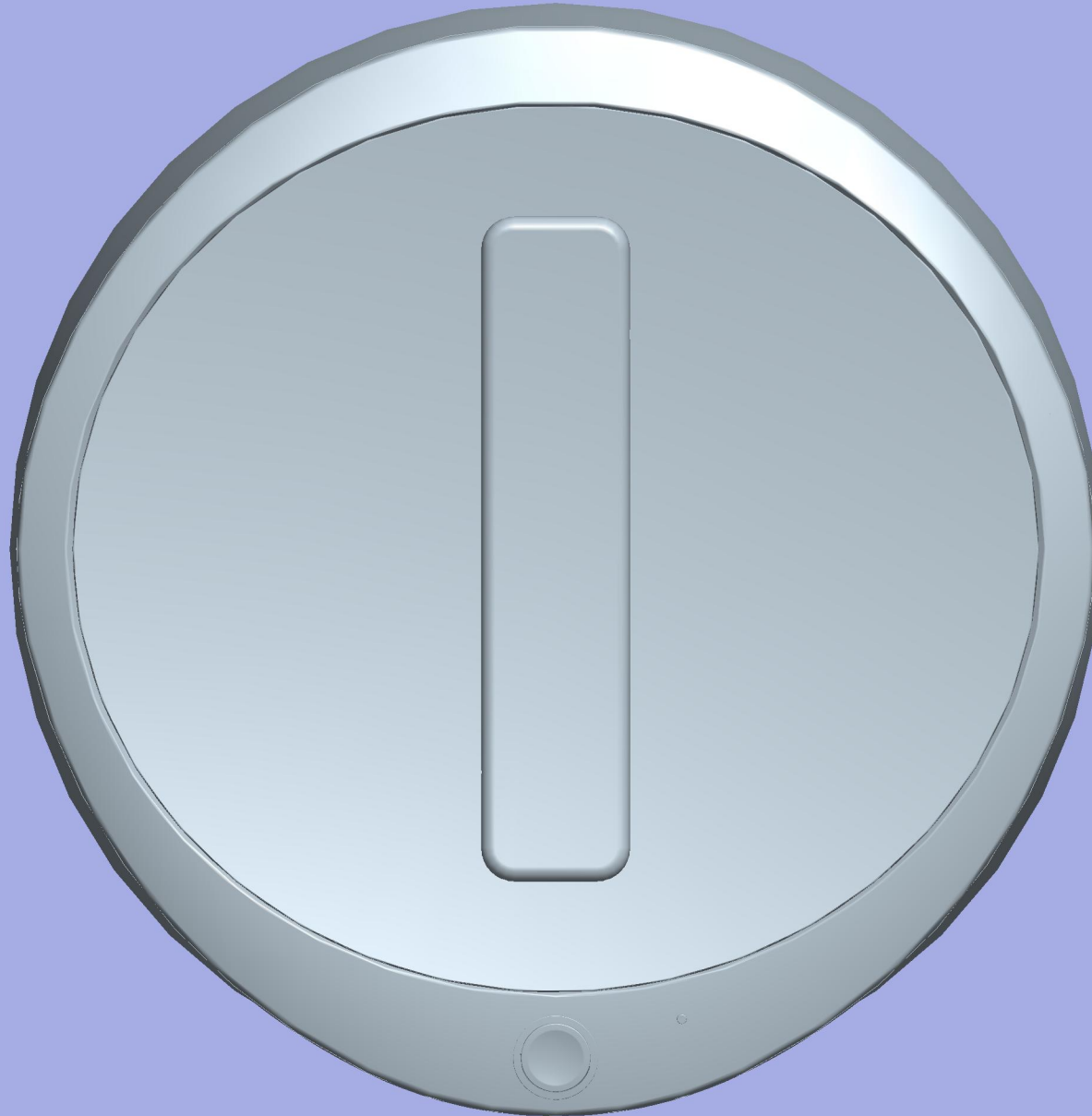

JERRY BRACH

Exhibit A











修勢状态: XSEC0004